

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BEATRICE BUTLER,)
vs.)
Plaintiff,)
vs.) NO. CIV-14-0878-HE
CAROLYN W. COLVIN,)
Acting Commissioner Social,)
Security Administration,)
Defendant.)

ORDER

Plaintiff Beatrice Butler filed this action seeking judicial review of the final decision of defendant, Acting Commissioner of the Social Security Administration (“Commissioner”), denying her application for disability insurance benefits and supplemental security income. Consistent with 28 U.S.C. § 636(b)(1)(B),(b)(3) and Fed.R.Civ.P. 72(b), the case was referred to Magistrate Judge Suzanne Mitchell, who recommends that the Commissioner’s decision be affirmed.

Plaintiff filed her application for disability benefits and supplemental security income in April 2009. After a hearing, the Administrative Law Judge (“ALJ”) found that plaintiff was not capable of performing her past relevant work, but could perform other available work in the economy. The Appeals Council denied plaintiff’s request for review, so the ALJ’s decision became the final decision of the Commissioner.

The magistrate judge liberally construed plaintiff’s submissions because, while plaintiff was previously represented by counsel at her administrative hearing and before the Appeals Council, she filed this action *pro se*. Report and Recommendation, Doc. #32, p. 1

n.1. The magistrate judge noted that plaintiff had submitted evidence, including various records pertaining to her conditions and medical treatment, that were dated after the Commissioner's final May 30, 2012, decision. However, because her review was limited to the Administrative Record ("AR"), the magistrate judge stated that she did not consider materials not found in the AR.

The Commissioner had essentially argued that plaintiff failed to make a cogent argument that the ALJ had committed error. The magistrate judge disagreed, concluding that plaintiff had reurged the four claims of error she raised to the Appeals Council¹ by including that brief with other materials she filed in this case. The magistrate judge then proceeded to address and reject those four arguments.

Plaintiff has filed an objection to the Report and Recommendation, which primarily consists of evidence that post-dates the Commissioner's decision. As the magistrate judge noted, the court cannot consider such evidence when considering whether or not the Commissioner properly denied plaintiff's claims. *See 42 U.S.C. § 405(g).* Although plaintiff is proceeding *pro se*, she must provide the court with some basis for determining that the magistrate judge erred in her conclusions. This she has not done.

Plaintiff has included in her submissions information concerning her daughter's death. While the court has great sympathy for plaintiff's loss of her child, that is not the issue before it.

¹*Plaintiff had filed the brief her former attorney had submitted to the Appeals Council, along with other materials she submitted as "Evidence for Court Case." See Doc. #24-2.*

Plaintiff has not shown that Magistrate Judge Mitchell erred in her analysis. Accordingly, the court **ADOPTS** the Report and Recommendation and the Commissioner's decision is **AFFIRMED**.

IT IS SO ORDERED.

Dated this 23rd day of December, 2015.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE